

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M-886-2022

Date of Decision:-01.02.2022

Brij Nandan & Anr.

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aayush Arora, Advocate for the Petitioners.

(Through Video Conferencing)

JASJIT SINGH BEDI, J. (ORAL)

The prayer in this petition is for quashing of the order dated 20.12.2019 (Annexure P-5) passed by the Chief Judicial Magistrate, Fatehgarh Sahib whereby charges under Sections 409/120-B of the IPC have been ordered to be framed, the order dated 29.11.2021 (Annexure P-7) passed by Additional Sessions Judge, Fatehgarh Sahib whereby the revision of the petitioners stands dismissed in an FIR No.116 dated 08.12.2018 registered under Sections 409 and 120-B of Indian Penal Code (hereinafter referred to as “the IPC”) at Police Station GRP, Srihind District Fatehgarh Sahib and all other consequential proceedings arising therefrom.

2. The brief facts of the case are that the complainant-Ram Singh Meena had got an FIR No.116 dated 08.12.2018 registered under

Sections 409 and 120-B of the IPC at Police Station GRP, Sirhind, District Fatehgarh Sahib against five accused persons namely Rakesh Kumar Malhotra (Arakshn Supervisor), Parvesh Walia (Ticket Supervisor), Brij Nandan, Anwar Ansari and Jarnail Singh. The allegations were that these accused persons were indulging in corruption in the Railway Department and because the complainant lodged a complaint against these persons, therefore, they hatched a conspiracy against him. On account of this fact, they had got one Sohan Lal a teacher at DAV, School, Khanna and other employees of the Railway Department to make a complaint against the complainant on the basis of which, the complainant was transferred from District Sirhind to District Ropar. The allegations further were that after the transfer of the complainant from District Sirhind to District Ropar, the accused persons namely Brij Nandan, Rakesh Malhotra and Anwar Ansari inspected the record of the complainant from time to time but found everything in order. The complainant had further stated that Brij Nandan and Rakesh Kumar Malhotra were continuously filing various complaints against him. On 04.08.2018, the accused persons took away and tampered with the relevant record pertaining to service period of the complainant from one Smt. Chanchal Bala, the details of which are reproduced hereinbelow:-

“(i) LC No.370416 record file, forwarding note, Id proof were misplaced;

(ii) LC No.370431, Id proof changed;

(iii) LC No.370448 to 49, all forwarding note and Id proof were removed;”

This was done so as to involve the complainant in a case and it resulted in the complainant being charge-sheeted.

The complainant had further stated the accused persons had committed various offence. On the basis of the said complaint and subsequent inquiry, the afore-mentioned FIR was registered against five above named accused persons, including the petitioners.

3. The Investigating Agency conducted a detailed investigation and a report under Section 173 of Cr.P.C. was submitted against Brij Nandan, Anwar Ansari and Jarnail Singh. At the stage of framing of charges, the Court of Additional Civil Judge (Senior Division)-cum-Chief Judicial Magistrate, Fatehgarh Sahib, while discharging Jarnail Singh directed that Brij Nandan and Anwar Ansari, the petitioners herein be charged under Sections 409/120-B of the IPC. The petitioners preferred a Criminal Revision Petition before the Additional Sessions Judge, Fatehgarh Sahib and the complainant along with the State also challenged the said order whereby, Jarnail Singh had been discharged. The said three criminal revision petitions were decided by the Additional Sessions Judge, Fatehgarh Sahib vide order dated 29.11.2021 (Annexure P-7). While the Criminal Revision Petition of the petitioners was dismissed, the case of Jarnail Singh was remanded back for fresh consideration. It is these two judgments which have been impugned by the petitioners before this Court.

4. The learned counsel for the petitioners has firstly argued that in the absence of sanction under Section 197 of Cr.P.C., the learned trial Court could not have framed charges against the petitioners. He argues that once, the Railway Department, of which the petitioners and

the complainant were employees, had not lodged any complaint for taking away/tampering of the documents, the FIR and the subsequent proceedings ought to have been quashed. He further argues that the statement of Sohan Lal recorded under Section 164 of Cr.P.C. and that of Chanchal Bala recorded under Section 161 of Cr.P.C. along with the other material in the challan were not enough to frame charges against the petitioners and they ought to have been discharged.

5. I have heard the learned counsel for the petitioners at length.

6. The first submission of the petitioners is that sanction for prosecution under Section 197 of Cr.P.C., was refused by the Railway Department and therefore, the petitioners could not have been charge-sheeted. Before proceeding with the matter, Section 197 of the Code of Criminal Procedure, 1973, and Section 409 IPC must be examined, which are reproduced hereinbelow:-

“(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression " State Government" occurring therein, the expression " Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3A) ¹ Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

SECTION 409 IPC

Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

7. This issue has come up before the Hon'ble Supreme Court and the Hon'ble Supreme Court in **Punjab Warehousing Corpn. Vs. Bhushan Chander & Anr.** **2016(3) RCR (Criminal) 869** has held in para 22 as under:-

“22 A survey of the precedents makes it absolutely clear that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the acts omission or commission is totally alien to the discharge of the official duty, question of invoking Section 197 CrPC does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha's (supra). The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted

items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under [Sections 467, 468 and 471](#) IPC may be of such nature that obtaining of sanction under [Section 197](#) CrPC is not necessary but when the said offences are interlinked with an offence under [Section 409](#) IPC sanction under [Section 197](#) for launching the prosecution for the offence under [Section 409](#) is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. **No official can put forth a claim that breach of trust is connected with his official duty.** Be it noted the three-Judge Bench in *B. Saha (supra)* has distinguished in *Shreekantiah Ramayya Munipalli (supra)* keeping in view the facts of the case. It had also treated the ratio in *Amrik Singh (supra)* to be confined to its own peculiar facts. The test to be applied, as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in *Matajog Dube (supra)* which we have reproduced hereinbefore. The three-Judge Bench in *B. Saha (supra)* applied the test laid down in *Gill's case* wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office. ”

Similarly in **Ramesh Kumar Vohra Vs. State of Haryana**

2012(3) RCR (Criminal) 322 this Court in para nos.27 & 32 held as under:-

“27. As indicated hereinabove, there are direct allegations against petitioner Ramesh Kumar Vohra EO that after accepting the illegal gratification, he hatched a criminal conspiracy with his co-accused, illegally removed the Will, misappropriated the amount and cheated the complainant in the manner described hereinabove. To me, committing the theft of Will, misappropriating the amount and cheating the complainant

cannot possibly be termed to be his act, relatable to and in connection with or in relation to the discharge of his official duty. Therefore, for such illegal act, no sanction under section 197 Criminal Procedure Code is necessary, as urged on his behalf.

32. Meaning thereby, if the nature of accusation of criminal conspiracy, theft, mis-appropriation, material evidence, legal position and totality of the facts and circumstances of the case, as discussed hereinabove, are put together, then, to me, the conclusion is inescapable that there is an ample evidence on record to frame the charges against the petitioners. Therefore, the contrary arguments of their counsel "stricto sensu" are liable to be and are hereby repelled under the present set of circumstances, as the ratio of the law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand. "

In Gian Chand Vs. State of Punjab 2008(4) RCR

(Criminal) 437 para 13 is as under:-

"13. Both the courts below i.e. trial Court and the Appellate Court examined the submissions of the petitioner regarding the requirement of sanction as envisaged under Section 197 Criminal Procedure Code. In my view , for embezzlement of the amounts of the Government no sanction is required as to embezzle the funds and forge the documents will not fall under the part of the official duty and petitioner while embezzling the amounts cannot be said to be acting or purporting to act in discharge of official duties. Furthermore, the petitioner was posted as a Clerk-cum-Cashier, therefore, his service can be dispensed with by Senior Medical Officer or Director Health Services and since he was not removable from his post by the Government, sanction under Section 197 Criminal Procedure Code is not attracted. I am in agreement with the findings of trial Court, which are reproduced as under:-

"...it is not the duty of public servant to misappropriate the public money and to forge the challans, therefore, no sanction under Section 197 Criminal Procedure Code is required in this case in my opinion for the prosecution of the accused. No benefit can be

had by the accused from the authorities cited at bar as they are distinguishable from the case in hand”.

8. Having examined the aforementioned provisions and the relevant law as laid down by the Hon'ble Supreme Court and this Court, all of which deal with the question of sanction in an FIR under Section 409 IPC the argument raised by the counsel for the petitioners is without merit and cannot be accepted. It is no part of one's official duty to commit an offence under Section 409 of IPC for which the petitioners have been charge-sheeted. Admittedly, the offence has been committed during the course of the service of the petitioners but not in the discharge of their official duties. Therefore, the act of the petitioners in taking away the document as alleged can never be a part of their official duty. Therefore, prior sanction for prosecution under Section 197 of the Cr.P.C. was not required.

9. The next contention of the learned counsel for the petitioners was that the statements of the witnesses were discrepant and there was insufficient material on the record to chargesheet the petitioners, moreso, when the Department had chosen not to take any action against them.

10. The relevant provision for discharge by a Magistrate in a case instituted on a police report is Section 239 Cr.PC which is reproduced hereinbelow:-

*“ **When accused shall be discharged-** If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate*

considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing ”

11. The issue regarding charge/discharge has been examined by the Hon'ble Supreme Court previously on numerous occasions.

The Hon'ble Supreme Court in **State by the Inspector of Police, Chennai Vs. S. Selvi & Another 2018(1) RCR (Criminal) 625** in its para 7 & 8 held as under:-

*“7 It is well settled by this Court in catena of judgments including the cases of **Union of India v. Prafulla Samal, (1979) 3 SCC 4; Dilawar Babu vs. State of Maharashtra (2002) 2 SCC 135; Sajjan Kumar vs. CBI (2010) 9 SCC 368; State v. A.Arun Kumar (2015) 2 SCC 417; Sonu Gupta vs. Deepak Gupta (2015) 3 SCC 424; State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711; Niranjana Singh Karam Singh Punjabi etc. vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunia (1979) 4 SCC 274** that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 Cr. P.C. pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a Post Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the*

materials as if he was conducting a trial. In the case of **Sajjan Kumar vs. CBI 2010(4) RCR (Criminal) 382: 2010(5) Recent Apex Judgments (R.A.J.) 350: (2010) 9 SCC 368**, this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles:

- (i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C., 1973 has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
- iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
- iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) *At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*

*This Court in the cases of **State vs. A. Arun Kumar 2015(1) RCR (Criminal) 295**; **2015(1) Recent Apex Judgments (R.A.J.) 38: (2015) 2 SCC 417, Sonu Gupta Vs. Deepak Gupta 2015(2) RCR (Criminal) 32: 2015(1) Recent Apex Judgments (R.A.J.) 607: (2015) 3 SCC 424, State of Orissa Vs. Debendra Nath Padhi 2003 (2) RCR (Criminal) 116 : (2003) 2 SCC 711 and State of Tamil Nadu Vs. Suresh Rajan 2014(1) RCR (Criminal) 572 : 2014(1) Recent Apex Judgments (R.A.J.) 310 : (2014) 11 SCC 709** has reiterated almost the aforementioned principles. However, In the case of **State of Haryana Vs. Bhajan Lal, 1991(1) RCR (Criminal) 383 : 1992 (Sup 1) SCC 335** relied upon by the counsel for respondent no.1 is not applicable to the facts of the case inasmuch as the said matter arose out of the judgment of the High Court quashing the entire Criminal proceedings inclusive of the registration of First Information Report. The said Matter was not concerned with the discharge of the accused.*

8. *In the matter on hand, the main allegation against the first respondent— accused no.2 as found in the charge sheet is that while the complainant along with the relevant documents proceeded to the residence of accused nos. 1 and 2 at Door No. 28, West Gopalapuram, Chennai—86, to get back his money due to him on 20.09.2011, at about 17:30 hours, accused nos. 1 and 2*

threatened the complainant, snatched away the documents from him, denied him permission to enter into their house and threatened him with dire consequences if he entered into their house. It is relevant to note that in the complaint dated 21.09.2011 it is stated that when the complainant went to West Gopalapuram and met accused for an enquiry about payment, the accused got furious, beat him and with the help of four henchmen pushed him out of their house. On the basis of these discrepancies, contention of the learned counsel for the accused that the case as made out by the prosecution cannot be believed inasmuch as the material on record is not consistent. It may give rise to some suspicion but not grave suspicion, though appears to be attractive, but is not acceptable in view of entire material on record. On going through the judgment of the High Court, we find that the High Court has virtually appreciated the entire material on record as if the High Court is trying a criminal case. It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case. At this preliminary stage, the High Court was not justified in concluding that the accused is entitled for discharge merely on the ground of discrepancy in the timings of the incident. The question as to whether respondent no.1 was present on the place of incident or not during the relevant point of time or she had been in Calcutta as sought to be argued before this Court is a matter of proof. Such fact needs to be gone into by the trial Court after recording the evidence.

If on the basis of the material on record, the Court would form prima facie opinion that the accused might have committed offence, it can frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the Court is not expected to go deep into the matter and hold that

the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that material brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence.

In State rep. By the Inspector of Police 'Q' Branch C.I.D.

Tirunelveli Range, Tamil Nadu Vs. Mariya Anton Vijay 2015(3)

RCR (Criminal) 576 in para nos.88, 101, 102 and 103 it was held as

under:-

“88. *As far as S.B. Johari (Supra) case is concerned, following proposition of law is laid down:*

4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any,

*cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, 1991 (1) RCR (Criminal) 89 : (1990) 4 SCC 76**, after considering the provisions of Sections 227 and 228 CrPC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the [pic]offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in **State of Bihar v. Ramesh Singh, (1977) 4 SCC 39**, **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4** and **Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja, (1979) 4 SCC 274** and held thus: (SCC p. 85, para 7)*

“From the above discussion it seems well settled that at the Sections 227- 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom *taken at their face value disclose the existence of all the ingredients constituting the alleged offence*. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”

(emphasis supplied)

5.....

6. *In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court*

was deciding the case as to whether the accused are guilty or not.....

101 *S.B. Johari's case (supra) was also a case where the High Court had quashed the charge at the instance of accused persons in exercise of its inherent jurisdiction by appreciating the material filed by the prosecution along with charge-sheet. The High Court therein had held that no case was made out on the basis of the contents of the charge sheet and the material filed in support thereof as in the opinion of the High Court, it was insufficient to frame the charge against the accused for their prosecution for commission of offence punishable under Section 5(1)(d) and (2) of the Prevention of Corruption Act. The accused were accordingly discharged by the High Court without compelling them to face the trial on merits.*

102 *In an appeal filed by the State against the order of the High Court, this Court allowed the State's appeal, set aside the order of the High Court and upheld the charge sheet and the charges which were framed by the trial court and laid down the law which we have reproduced in para 88 above.*

103 *Coming back to the facts of this case, the High Court committed the same error which was committed by the High Court in S.B. Johari's case (supra) because in this case also the High Court went into the questions of fact, appreciated the materials produced in support of charge sheet, drawn inference on reading the statements of the accused, and applied the law, which according to the High Court, had application to the facts of the case and then came to a conclusion that no prima facie case had been made out against any of the accused for their prosecution under the Arms Act. This approach of the High Court, in our considered view while deciding petition under Section 482 of the Code was wholly illegal and erroneous”.*

The Hon'ble Supreme Court in **Sanghi Brothers (Indore)**

Pvt. Ltd. Vs. Sanjay Choudhary & Ors. 2008 (4) R.C.R. (Criminal)

640 in para nos.8, 9, 10 & 11 held as under:-

*“8. Sections 227, 239 and 245 deal with discharge from criminal charge. In **State of Karnataka v. L. Muniswamy (1977 (2) SCC 699)** it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. (Underlined for emphasis). The Court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia (1989 (1) SCC 715)** and **State of West Bengal v. Mohd. Khalid (1995 (1) RCR (Criminal) 318 : 1995 (1) SCC 684)**.*

*9. In **R.S. Nayak v. A.R. Antulay (1986 (2) SCC 716)** this Court referred to Sections 227 and 228 so far as they are relatable to trial. Sections 239 and 240 are relatable to trial of warrant cases and 245(1) and (2) relatable to summons cases.*

10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of a prima facie case to be applied.

11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed.

The Hon'ble Supreme Court in **Kaptan Singh Vs. The State of Uttar Pradesh & Ors. Criminal Appeal No.787 of 2021** **Decided on 13.08.2021** in para no.9.1 held as under:-

“ At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.PC has quashed the criminal proceedings for the offences

*under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.PC quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.PC was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. **However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial.** As held by this Court in the case of **Dineshbhai Chandubhai Patel (Supra)** in order to examine as to whether factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating Agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it*

becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.”

12. A perusal of Section 239 Cr.PC and the relevant law cited would show that the Magistrate is to examine the report under Section 173 Cr.PC and the attached documents to frame charges or not. The statement of Smt. Chanchal Bala recorded under Section 161 of Cr.P.C. was referred to by the learned counsel for the petitioners. The said statement clearly shows that the documents i.e. forwarding note, ID proof etc. as referred to hereinabove had been taken away by Brij Nandan and Anwar Ansari thereby prima facie committing an offence under Section 409 of IPC. It may also be relevant to mention here that the same documents which have been allegedly misappropriated, have been found to be missing by the Department itself as per their communication dated 24.01.2019 (Annexure P-8) a fact duly admitted by the petitioner's counsel. The statement of Sohan Lal (Annexure P-10) also prima facie inculcates the petitioners. Once, these statements under Sections 161/164 of Cr.P.C. are available on record, at the stage of framing of charges, the veracity of the same cannot be examined in a petition under Section 482 Cr.P.C as that would amount to appreciation of evidence which is impermissible at this stage. Even otherwise, defence documents relied upon by the petitioners's counsel cannot be examined by this Court and charges are to be framed on the basis of the report under Section 173 (2) of Cr.P.C. along with the documents attached therewith. Also material having been collected by the Investigating Agency and charges having been framed, merely because

the Railways Department chose not to proceed against the petitioners would not be a ground to discharge the accused.

Even otherwise at the time of framing the charges, only a prima facie case is to be seen and a high degree of suspicion is sufficient to frame charges. The Court is not to examine the statements/documents in the report under Section 173(2) Cr.P.C. so as to record a judgment of conviction or acquittal.

13. Thus, keeping in view the aforementioned discussion, at this stage, there are clear and specific allegations against the petitioners for having committed the offence in question. Therefore, there is no illegality in either the registration of the FIR, in the framing of charges or in the Sessions Court dismissing the criminal revision against the order framing charges. Therefore, the present petition for quashing of the orders dated 20.12.2019 (Annexure P-5) passed by CJM Fatehgarh Sahib and dated 29.11.2021 (Annexure P-7) passed by Additional Sessions Judge, Fatehgarh Sahib is dismissed.

14. However, it is made clear that what has been observed by this Court is only for the purposes of disposal of the present quashing petition and any observations made herein shall either way not prejudice the rights of the parties during the course of trial and the trial Court may proceeding with the trial uninfluenced by the observations made herein.

(JASJIT SINGH BEDI)
JUDGE

February 01, 2022

Jitesh/Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>